IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.1.2002.

CORAM:

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CIVIL REVISION PETITION NO.1023 OF 2000 and TRANSFER CIVIL MISCELLANEOUS APPEAL NOS.1123 to 1124 OF 2001 AND C.M.P.NO.5297

A.John ... Petitioner in CRP
and appellant in
Vs both the C.M.As.

Young Men Christian Association,
represented by its General Secretary
Dr.G.Jacob Appadurai ... Respondent in all the matters.

Civil Revision Petition No.1023 of 2000 is filed under Section 115 of the Code of Civil Procedure against the order and decree dated 30.3 .2000 made in I.A.No.3292 of 2000 in O.S.No.1200 of 2000 by the IV Assistant City Civil Court, Madras.

Transfer Civil Miscellaneous Appeal No.1123 of 2001 is filed against the order and decree dated 30.3.2000 made in I.A.No.2997 of 2000 in O.S.No.1200 of 2000 by the IV Assistant City Civil Court, Madras.

Transfer Civil Miscellaneous Appeal No.1124 of 2001 is filed against the order and decree dated 30.3.2000 made in I.A.No.3294 of 2000 in I.A.No.2997 of 2000 in O.S.No.1200 of 2000 by the IV Assistant City Civil Court, Madras.

* * *
! For the petitioner in
CRP and the appellant
in both the CMAs. : Mr.N.Rajan

^ For the respondent in
all the matters : No Appearance

: COMMON ORDER

All the above proceedings, the revision petition and the two Transfer Civil Miscellaneous Appeals have arisen out of the common fair and decretal orders dated 30.3.2000 respectively passed in I.A.Nos.3292 of 2000, 2997 of 2000 and 3294 of 2000 in O.S.No.1200 of 2000 by the IV Assistant City civil Court, Madras.

2. From among the three Interlocutory Applications filed before the Court below, mentioned supra, I.A.No.2997 of 2000 has been filed by the plaintiff/Young Men's Christian Association, under Order 39 Rules 1 and 2 of C.P.C. Praying to grand an ad-interim injunction restraining the respondent, his men, agents or any other person claiming through him from in any manner interfering with the peaceful possession and enjoyment of the suit premises by the petitioner Association and its tenants, pending disposal of the suit in O.S.No.1200 of 2000.

3. The other two applications in I.A.Nos.3292 and 3294 of 2000 have been filed by the defendant, the first one praying to direct the respondent/Association to restore possession of the premises at YMCA building, III Floor, 223, N.S.C.Bose Road, Chennai-1 and the other application in I.A.No.3294 of 2000 has also been filed by the defendant seeking to vacate the order of interim injunction dated 29.2.2000 granted in I.A.No.2997 of 2000 in O.S.No.1200 of 2000.

4. The Court below, in its common order dated 30.3.2000 has allowed the I.A.No.2997 of 2000 filed by the plaintiff/YMCA and has dismissed the other two applications filed by the defendant in I.A.Nos.3292 and 3294 of 2000 as a result of which the defendant in the suit has come forward to prefer the above Civil Revision Petition and Civil Miscellaneous Appeals. So far as the Civil Miscellaneous Appeals are concerned, the defendant in the suit had originally preferred them before the III Additional Civil Court, Madras and by the order of this Court dated 9.11.2000 made in Tr.C.M.P.Nos.11411 of 2000 and 11412 of 20 00, both these C.M.As. have been transferred to the file of this Court for a joint hearing along with the C.R.P.No.1023 of 2000 and they have been renumbered as such and hence being connected matters all these matters have been taken up for consideration jointly and this common order is passed.

5. To trace the facts of the case, all the three Interlocutory Applications, mentioned supra, have arisen out of the suit filed by the plaintiff Association in O.S.No.1200 of 2000 praying for the reliefs of declaration and injunction on averments such as that the plaintiff Association is the owner of the suit property bearing D.Nos.222 and 223, N.S.C.Bose Road, Chennai, which consists of three floors; that a part of the third floor portion was leased out to the defendant in the year 1994 on a monthly rent of Rs.5,360/= with an advance of Rs.36 ,000/= for his business `Cushions India Corporation'; that the defendant was irregular in payment of monthly rents and did not pay the rent from June, 1996 to September, 1996 and on demand, the defendant issued the cheque, which was dishonored; that the staff of the plaintiff were able to catch the defendant demanding the rental arrears and at that time, he informed the staff that he was vacating the premises in the month of July, 1997, which he did not do, but finally agreed to vacate in January, 2000; that accordingly on 31.1.2000, the defendant vacated the premises and handed over a written letter dated 31.11.2 000 to the plaintiff confirming the same and therefore the defendant is no longer a tenant under the plaintiff; that on 15.2.2000, the premises was leased out to M/s.Sara Agencies Private Limited on a monthly rent of Rs.6,030/= on entering into an agreement dated 15.2.2000; that on 17.2.2000, the defendant visited the premises and threatened the new tenant to vacate the premises stating that he

was going to continue his business there and thereafter on 18.2.2000 and 22.2.2000 also, the defendant with his henchmen, threatened the new tenant as a result of which, they started complaining with the plaintiff and hence the suit for declaration and permanent injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the plaintiff. Along with the said suit, the plaintiff has also filed I.A.No.2997 of 2000 praying for an ad-interim injunction restraining the defendant/respondent and his men from interfering with the peaceful possession and enjoyment of the suit property and the Court below, observing that there is a prima facie case and balance of convenience exist in favour of the petitioner/plaintiff, had granted adinterim injunction, while entertaining the suit on file.

6. On service of notice, the respondent/defendant has filed a counter in the said injunction petition wherein besides generally denying the allegations of the plaint and the injunction petition which is the replica of the plaint, the defendant would take strong exception to the attitude of the plaintiff in filing the suit for a declaration on ground that the defendant is not a tenant of the plaintiff and for consequential permanent injunction. Confirming his tenancy from 1.10.1994 on a monthly rent of Rs.5,360/= regarding the suit property, the respondent/defendant has also stated that the General Secretary of the plaintiff/Association by name Jacob Appadurai and the Accountant one Samikannu, had collected Rs.1 lakh from him without receipt and Rs.36,000/= towards the deposit with receipt, who are in the habit of making such collections from the prospective tenants before their induction; that he has been in possession and enjoyment of the premises from the inception of the tenancy and has also spent more than Rs.2 ,50,000/= for improvements and decorations.

7. Giving a description of his sphere of activity in his trade of M/s.Cushions India Corporation, the respondent would state that since he is out of station often and again, he used to entrust the day-today affairs with one Gomez, the Manager and the rents used to be paid for two or three months together by drafts and cheques and at times by cash; that in spite of himself having paid by pay order dated 15.2 .2000 drawn on the Indian Bank, Harbour Branch, Madras, the Secretary of YMCA started negotiating with third parties to induct them into possession and hence he was constrained to issue a legal notice dated 17.2.2000 to the said Jacob Appadurai, the Secretary and Samikannu, the Accountant of the YMCA requiring them to desist from entering into any such venture.

8. The respondent/defendant would further state that on 1.3.2000, he came to the office as usual at about 11 am. and he was shocked to see that his articles like the Executive Table containing his business documents, the chairs,office materials, fax machine, clerical tables etc. scattered outside his premises and he was further able to find his lock was broken and his office was locked by another lock; that he also found a sum ofRs.10,200/= and some important documents missing from the executive table; that it is the said Jacob Appadurai and the Samikannu, ho trespassed into the office, committed theft of the said articles and cash with the help of some hooligans; that he lodged a police complaint and on coming to know that an order of interim injunction had been obtained by the plaintiff by suppressing

the fact of possession and enjoyment of the suit premises by the defendant on 29.2.2000 and under the pretext of said order only, they have ventured to break open the lock of his room and trespass into the office and commit theft of. On such averments, the defendant would pray to dismiss the injunction petition.

9. Along with the counter in the injunction petition, the defendant in the suit would also file two applications in I.A.Nos.3292 and 329 4 of 2000, the first one praying to restore his possession and the second application praying to vacate the order of ad-interim injunction granted in I.A.No.2997 of 2000.

10. All the above three applications have been taken up for consideration by the Court below for a joint hearing and conducted an enquiry into the matter wherein, though no witness has been examined on either side, 17 documents have been marked on the part of the plaintiff as Exs.A.1 to A.17. Likewise, on the part of the defendant, who is the respondent in the injunction petition and the petitioner in the other two petitions, 15 documents have been marked as Exs.B.1 to B.15 and one document would be marked as Ex.C.1 by the Court i.e. the report of the Advocate-Commissioner. In consideration of all these materials placed on record, the Court below would pass a common order thereby making the ad-interim injunction granted in I.A.No.2997 of 200 0 absolute thus allowing the said petition and dismissing the other two petitions filed by the defendant in the suit in I.A.Nos.3292 and 3 294 of 2000, as a result of which, the defendant in the suit has come forward to file the above Civil Revision Petition and the Transfer Civil Miscellaneous Appeals on certain grounds as brought forth in the grounds of revision and appeals.

11. When all the above matters were taken up for consideration by this Court on 25.1.2002, the learned counsel appearing for the revision petitioner in the C.R.P. And the appellant in both the Civil Miscellaneous Appeals was present and argued the matter elaborately. On the other hand, in spite of having waited for the whole day, absolutely, no representation was made on the part of the respondent in all the matters as a result of which, this Court is left with no option but to pass this order on the materials made available on record and upon hearing the learned counsel for the revision petitioner and the appellant.

12. During arguments,besides tracing the facts and circumstances leading to the filing of the suit by the respondent herein, the exparte injunction order passed by the lower Court on 29.2.2000 and the aftermath effect consequent to the said order,the learned counsel for the petitioner would also give a clear picture of the procedures followed by the lower Court culminating the common order coming into existence. While so, the learned counsel would point out that making use of the ad-interim injunction granted ex-parte on 29.2.2000, the defendant was dispossessed forcibly, without obtaining any order to that effect, on 1.3.2000 i.e. On the next day of obtaining the ex-parte interim injunction merely by taking shelter under the restrictive injunction order passed by the lower Court based on the false representations made on the part of the plaintiff that the defendant

volunteered to vacate the premises, as given in Ex.A.8 dated 31.1.2000 whereby versions are said to have been found to the effect of the defendant vacating the premises on the same day and therefore he is no longer the tenant under the plaintiff.

13. The learned counsel would further exhort that the defendant neither gave Ex.A.8 dated 31.1.2000, nor had he vacated the premises and as given in the police complaint, many of his articles and records have been stealthily removed by the plaintiff taking advantage of the fact that the defendant was away from the premises, one of which was the letter-head of the defendant bearing only his signatures at the bottom for facilitating the same by his officials for business purposes in emergency; that Ex.A.8 letter was neither voluntarily nor genuinely given, but make-believe and made-up for the purpose of the plaintiff in a clandestine manner and therefore the learned counsel is firm in his arguments that the conclusions arrived at, based on Ex. A.8, by the lower Court are fallacious and becomes liable to be set aside.

14. The learned counsel for the petitioner/defendant would bring to the notice of this Court another vital point of the plaintiff having filed a similar suit just prior to filing this suit seeking permanent injunction on the same set of facts and circumstances in O.S.No.1 091 of 2000 on the file of the Court of XI Assistant City Civil Judge, Chennai, and in the very same manner having filed an application seeking interim injunction as per I.A.No.2814 of 2000 and since no interim order as sought for had been granted by the said Court, the plaintiff withdrew the said suit on a petition filed under Section 28(2) r/w. Section 151 C.P.C. on 23.2.2000 and without disclosing the same and burking the said fact, had fraudulently filed the present suit changing the jurisdiction to a different court i.e. the IV Assistant City Civil Court, Chennai and had obtained the ex-parte ad-interim injunction by filing I.A.No.2997 of 2000 and making use of this restrictive injunction order, the plaintiff, had, in an unlawful manner, evicted the defendant on the next day of obtaining the interim injunction.

15. The learned counsel would lament that neither the defendant had any knowledge of the earlier suit filed in the Court of XI Assistant City Civil Judge, Chennai, nor had there been any occasion for the lower Court herein to consider the said circumstances of withdrawing the said suit, since no interim injunction as sought for had been granted by that Court but ordered only notice and on the fifth day of having withdrawn that suit, the present suit had been filed on one and the same set of facts, but adding a prayer of declaration without any reason assigned in the plaint for the same and the plaintiff achieved his illegal designs of forcible eviction of the defendant, which the lower Court had no reason to consider.

16. In full consideration of the pleadings by parties before the lower Court and having regard to the materials placed on record and upon hearing the learned counsel for the petitioner/appellant in all the above matters, what comes to be known is that it is a suit filed by the plaintiff/Association praying for a declaration and injunction to the effect that the defendant is not a tenant under the plaintiff Association in respect of the suit properties and for consequential permanent injunction restraining

the defendant, his men, agents etc. from interfering with the plaintiff's and its tenant's peaceful possession and enjoyment of the property and for costs.

In the said suit, the plaintiff has also filed I.A.No.2997 of 2000 praying for an adinterim injunction pending disposal of the suit in which the lower Court has passed orders granting ex-pate injunction on 29.2.2000.

17. The strong case put up on the part of the revision petitioner/ appellant/defendant is that he was the tenant under the plaintiff pertaining to the suit property from 1994, which is an admitted fact on the part of the plaintiff and pressure was exerted on the defendant to evict the premises, since, according to the defendant, the Secretary and Accountant of the plaintiff/Association are in the habit of receiving enormous amounts unofficially on entertaining new tenants; that likewise, even from the defendant they received a sum of Rs.1 lakh, which has not been brought out in the account at all and therefore, activated by such ill-will and motive and taking advantage of the absence of the defendant at the premises often and again since he had to go on business tours and with intent to evict the defendant who is a lawful tenant, by means other than legal, had been making strenuous attempts and while the dispute regarding th e tenancy was going on by issue of notice and counter claims, the plaintiff, making use of the letter-head kept in the drawers of his table with the signature of the defendant, had created Ex.A.8 in their favour deliberately and in a clandestine manner approached the Court of XI Assistant City Civil Judge with the suit in O.S.No.1091 of 2000 filing the same on 12.2.200 0 and further filing I.A.No.2814 of 2000 along with the suit praying for an ad-interim injunction pending disposal of the suit and since the said Court did not grant any interim injunction in the said Interlocutory Application, but only ordered notice, withdrawing the same for no proper reason assigned by filing a petition in I.A.No.2905 of 2 000, again on the same set of facts, but modifying the relief into one of declaration and injunction, and changing the jurisdiction and without disclosing the earlier suit filed in O.S.No.1091 of 2000 on the file of the Court of XI Assistant City Civil Judge, Chennai, the plaintiff had filed the present suit in O.S.No.1200 of 2000 before the Court of IV Assistant City Civil Judge and the said Court having granted an ad-interim injunction in I.A.No.2997 of 2000, as per its order dated 29.2.2000, the plaintiff, with the help of this restrictive injunction order, was able to dispossess the defendant from and out of possession of the suit property, in spite of himself being a lawful tenant and in spite of the law being that he could not be evicted from out of possession of the suit property without following the procedures contemplated under the Tamil Nadu Buildings (Lease and Rent Control) Act, 1961. Since neither the plaintiff had placed any of the documents connected to the suit in O.S.No.1091 of 2000 and the I.As. therein nor had the petitioner/appellant filed any of those materials before this Court, in exercise of the appellate powers, this Court by summoning the entire original records in O.S.No.1091/2000 on the file of the XI Assistant City Civil Court, Chennai, had a judicial notice of the facts pleaded on the part of the petitioner/appellant when the facts connected to the filing and withdrawal of the earlier suit came to be found true. Absolutely without offering any reason in I.A.No.2905 of 2000, the said suit had been withdrawn.

18. On the part of the plaintiff, his case is simple in the sense that it was the defendant, on executing Ex.A.8 dated 31.1.2000, surrendered possession of the said premises on that date itself and hence the tie between the plaintiff and the defendant as landlord and tenant was snapped and therefore, again, he could not claim to be either in possession or having any such relationship with the plaintiff.

19. The Court below, having considered Ex.A.8 letter dated 31.1.200 0, under which it is alleged that the defendant surrendered possession and also Exs.B.8 and B.9 a letter and receipt, and opining that there is no proof for Ex.A.8 letter-pad having been stolen by the plaintiff, would decide making the ad-interim injunction absolute and dismissing the other two applications filed on the part of the defendant respectively seeking restoration of possession and vacating the injunction order passed and thus passing its common order dated 30.3.2000 .

20. It is an admitted case of the landlord-tenant row and as such no tenant could be evicted unless by means of the procedures established under the Tamil Nadu Buildings (Lease and Rent Control) Act. While such being the position, it is not the regular eviction petition or seeking any other relief that has been filed by the landlord under the relevant provisions of the T.N.B.(L.R.C.)Act, but a suit for declaration and permanent injunction based on Ex.A.8, which is under controversy. The plaintiff having come forward to allege that Ex.A.8 had been voluntarily given by the defendant has not anywhere made it clear as to why and under what circumstances, the tenant gave such a letter surrendering possession so as to further seek the relief to declare that he was not the tenant thereafter. Even if sufficient time had lapsed, one could understand that the tenant either wit an avaricious mind or at the instigation of those who were ill-disposed of with the plaintiff, had a change of mind and of late, came forward to put up a false case, claiming forcible dispossession and seeking to induct himself into possession. But, in the instant case, immediately after coming to know of his dispossession, the defendant had lodged a police complaint, complaining of eviction by force and only later the defendant came to know of the ex-parte ad-interim injunction order passed in favour of the plaintiff by the lower Court, just one day prior to his forcible eviction.

21. In those circumstances, ample chances exist for one to think that having obtained an order of restrictive ex-parte injunction the tenant had been dislodged by the landlord who has now come forward complaining that the tenant is trying to reenter by unlawful means. The possibility of the plaintiff having caused the forcible dispossession of the defendant, who was in lawful possession of the premises as a tenant cannot be so easily ruled out. Therefore, in such a suit, the Courts should suspect the fidelity of the plaintiff having come forward to file the suit without recourse to the regular law i.e. T.N.B.(L.R.C.)Act governing such disputes especially where the landlord prays for an ex-parte interim injunction in the suit.

22. An order that is passed in an application filed under Order 39, Rules 1 and 2, in an ex-parte manner is only subject to the rules

laid down under Order 39 Rule 3, which reads:
Before granting injunction, Court to direct notice to opposite party: The Court shall in all cases, except where it appears that the object of granting the injunction would be defeated by the delay, before granting an injunction, direct notice of the application for the same to be given to the opposite party.
Provided that, where it is proposed to grant an injunction without giving notice of the application to the opposite party, the court shall record the reasons for its opinion that the object of granting the injunction would be defeated by delay, and require the applicant -

(a) to deliver to the opposite party, or to send to him by registered post, immediately after the order granting the injunction has been made, a copy of the application for injunction together with -
i)a copy of the affidavit filed in support of the application.
(ii)a copy of the plaint; and
(iii)copies of documents on which the applicant relies, and

(b)to file, on the day on which such injunction is granted or on the day immediately following that day, an affidavit stating that the copies aforesaid have been so delivered or sent."

23. No such situation is seen prevalent in the whole of the case to the effect that the defendant was taking such frantic attempts to take forcible possession with such money and muscle power and it is simply alleged that the defendant himself came to the premises and threatened the new tenant to vacate for which no protection much less police protection has been resorted to either by the plaintiff or by the new tenant and therefore, there is reason to conclude that this allegation is created for the purpose of the suit and this cannot, in any manner, be construed to satisfy the requirement of law that `unless the ex-parte interim order is passed, the very purpose of injunction will get defeated'.

24. Moreover, Ex.A.8, relying on which the lower Court has arrived at the conclusion to make the ex-parte injunction absolute, is highly disputed one and unless the genuineness and the circumstances under which it came into existence are decided on an elaborate evidence allowed to be let in, during trial, no hasty conclusion could be arrived at as it has been arrived at by the lower Court.

25. Last of all, the earlier suit that has been filed by the plaintiff in the Court of XI Assistant City Civil Judge, Chennai in O.S.No.1091 of 2000, had not been mentioned in the present suit by the plaintiff. The said suit was for a permanent injunction and along with the said suit, the plaintiff also filed I.A.No.2814 of 2000 for adinterim injunction and since the said Court had refused to grant any interim injunction as sought for, the plaintiff had not only hastily withdrawn the suit on 23.2.2000, for no valid or tangible reason assigned,but also on the fifth day of withdrawal of the said suit, has come forward to file the present suit in O.S.No.1200 of 2000 on the very same pleadings, but with a modified prayer of declaration and injunction before a different Court i.e. on the

file of the Court of IV Assistant City Civil Judge, Chennai and had succeeded in getting the exparte injunction order as on 29.2.2000.

26. Of course, the facts encircling the filing of the earlier suit was not known to the lower Court, since the plaintiff had burked the whole fact of filing of the earlier suit, which, till the disposal of the petition was deliberately kept as a secret without even being known to the defendant. However, the plaintiff cannot be taken to have approached the lower Court with clean hands and honest intention and with the true facts and circumstances on account of deliberate non-disclosure of all the facts connected to the filing of the earlier suit and getting it dismissed as withdrawn for no valid reasons assigned.

27. Under any stretch of imagination in a case of this nature, wherein, there is strong dispute between the landlord and tenant and in the light of the provision of law, under Order 39 Rules 1 and 2 being negative in approach with a rare exception, the lower Court should not have ventured to grant the order of ad-interim injunction, which has given way to dislodge a lawful tenant and therefore the Courts are expected to be very cautious about gra nting such ex-parte interim orders without an opportunity for the other side to be heard. The lower Court has not at all acted either within the parameters of law or even on a fair appreciation of the facts and circumstances encircling the whole affair connected to the landlord-tenant dispute and in fact without proper appreciation of the materials made available and the circumstances brought forth, it has only arrived at erroneous conclusion not only in passing order in the injunction application filed by the plaintiff in I.A.No.2997 of 2000 in an ex-parte manner, but also allowing the same on enquiry, making the ex-parte injunction order absolute. Furthermore, this error committed in the injunction application has resulted in the further errors to be committed by the lower Court in dismissing the two applications filed by the defendant in I.A.Nos.3292 and 3294 of 2000, which should have been allowed in the circumstances of the case.

28. The common order passed by the Court of IV Assistant City Civil Judge, dated 30.3.2000 in I.A.Nos.2997 of 2000, 3292 of 2000 and 329 4 of 2000 suffers from patent errors of law and perversity in approach, resulting in rendering the entire orders passed by the lower Court being declared erroneous, thus becoming liable only to be set aside.
In result,
(i) The above revision petition in C.R.P.No.1023 of 2000 and Transfer C.M.A.Nos.1123 and 1124 of 2000 are allowed with costs throughout.
(ii) The common fair and decretal orders dated 30.3.2000 made in I.A.Nos.2997, 3292 and 3294 of 2000 in O.S.No.1200 of 2000 by the Court of IV Assistant City Civil Judge, Chennai are hereby set aside.
(iii) The petition in I.A.No.2997 of 2000 in O.S.No.1200 of 2000 on the file of the Court of IV Assistant City Civil Judge, Chennai filed by the plaintiff therein stands dismissed while I.A.Nos.3292 and 3294 of 2000 in O.S.No.1200 of 2000 on the file of the Court of IV Assistant City Civil Judge, Chennai filed by the defendant therein stand allowed.
(iv) Consequently, C.M.P.No.5297 of 2000 is closed.

Index:Yes
sml/Rao 28.1.2001.

Sd/. Asst. Registrar

/true copy/

Sub Asst. Registrar.

To
The IV Assistant City Civil Judge,
Madras.

sml/Rao
V.KANAGARAJ,J.

Pre-delivery
Common order in CRP.1023/2000
Tr.CMAs.1123 & 1124/2000 and
CMP.No.5297 of 2000.

28.1.2002.